

# Exhibit A

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

H.G. and M.G. through their next friend  
ROBERT LATHAM, C.P. through his next  
friend PAULA VELAZQUEZ, L.T.  
through her next friend ROBERT  
LATHAM, F.C. through his next friend  
STEWART COOKE, S.A. through her  
next friend STEWART COOKE, and N.K.  
through her next friend BERNARD  
PERLMUTTER, for themselves and those  
similarly situated.

**Plaintiffs,**

v.

MIKE CARROLL, in his official capacity as  
Secretary of the Florida Department of  
Children and Families.

**Defendant.**

C/A No. 4:18-cv-00100-RH/CAS

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“**Agreement**”) is entered into by and between Plaintiffs H.G. and M.G. through their next friend Robert Latham; C.P. through his next friend Paula Velazquez; L.T. through her next friend Robert Latham; F.C. through his next friend Stewart Cooke; S.A. through her next friend Stewart Cooke; and N.K. through her next friend Bernard Perlmutter, for themselves and those similarly situated (together, “**Plaintiffs**”) and Defendant Mike Carroll (“**Defendant**”), in his official capacity as Secretary of the Florida Department of Children and Families (“**DCF**”) as of the Effective Date of this Agreement.

**Part I. Definitions**

- A. “**AHCA**” stands for the Florida Agency for Health Care Administration.
- B. “**APD**” means the Florida Agency for Persons with Disabilities.
- C. “**Auditor**” is defined in **Part VI(A)**.
- D. “**Audit Process**” is described in **Part VI(B)**.

- E. **“Capacity Waiver”** means a documented approval, prior to Placement, that authorizes exceptions to the licensed capacity and the total number of Children or infants to be cared for in a family foster home as defined in Rule 65C-30.001(10), Fla. Admin. Code (2018).
- F. **“CBC”** means community-based care lead agencies.
- G. **“CFSR”** means the Child and Family Services Review Round 3.
- H. **“Children”** or **“Child”** means children whose cases originate in the Southern Region.
- I. **“Class Member Representatives”** means counsel for the Class Members.
- J. **“Class Members”** means all Children who are, or in the future are, in Placements. This includes a Child who is (1) on the run from or missing from any Placement or (2) who is being housed temporarily (such as a Child visiting kin, in a residential treatment center, Group Home, crisis unit or hospital, substance abuse program, boarding school, summer camp, wilderness camp, hotel, motel, Contracted Service Provider office, or state agency office). This does not include a Child who is placed with kin or Fictive Kin at the time a sample is pulled for validation by the Auditor for purpose of Outcomes 2 and 3.
- K. **“Contracted Service Provider”** means private agency that has entered into a contract with DCF or with a CBC to provide supervision of and/or services to Children per Rule 65C-30.001(34), Fla. Admin. Code (2018).
- L. **“Court”** means the U.S. District Court for the Northern District of Florida in the above captioned action.
- M. **“Effective Date”** means the date that the Court enters an order in accordance with **Part VIII** approving this Agreement.
- N. **“Fictive Kin”** means, in accordance with section 39.4015(2)(d), Florida Statutes (2018), an individual who is unrelated to the Child by either birth or marriage, but has such a close emotional relationship with the Child that he or she may be considered part of the family.
- O. **“Foster Care”** means, in accordance with section 39.01(30), Florida Statutes (2018), care provided a Child in a licensed foster family or boarding home, Group Home, agency boarding home, Child care institution, or any combination thereof.
- P. **“Gap Analysis”** is described in **Part III**.



- Q. “**Group Home**,” “Group Care Facility” or “Licensed Group Care Facility” means a type of Residential Child-Caring Agency providing “residential group care” within the meaning of section 409.1676(2)(b), Florida Statutes (2018), or a living environment for Children who are expected to be in Foster Care for at least six (6) months with 24-hour-awake staff or live-in group home parents or staff. *Accord* Rule 65C-30.001(53), Fla. Admin. Code (2018).
- R. “**Lawsuit**” means the case styled *H.G. and M.G. through their next friend Robert Latham, et al. v. Mike Carroll, in his official capacity as Secretary of the Florida Department of Children and Families*, Case No. 4:18-cv-00100-RH/CAS, U.S. District Court for the Northern District of Florida.
- S. “**Outcomes**” means Outcomes 1, 2 and 3 as described in **Part IV**.
- T. “**Out-of-Home Care**” means placing a Child in licensed and non-licensed settings, arranged and supervised by the Department or Contracted Service Provider, outside of the home of the parent per Rule 65C-30.001(80), Fla. Admin. Code (2018).
- U. “**Parties**” mean the Plaintiffs, Defendant, and DCF. Any single one is a “**Party**.”
- V. “**Placement**” means placement in Foster Care.
- W. “**Placement Commitments**” mean Placement Commitments 1, 2, and 3 as described in **Part V**.
- X. “**Placement Setting**” is used herein as defined by 45 C.F.R. Part 1355, Appendix A, Part V.
- Y. “**Protected Health Information**” is used herein as defined by 45 C.F.R. §160.103.
- Z. “**RMD**” means DCF’s Regional Managing Director or his or her designee in the Southern Region.
- AA. “**Residential Child-Caring Agency**” means any person, corporation, or agency, public or private, other than the Child’s parent or legal guardian, that provides staffed 24-hour care for Children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such Residential Child-Caring Agencies include, but are not limited to, maternity homes, runaway shelters, Group Homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential Child-Caring Agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under section 393.067 or 394 or chapter 397, Florida Statutes (2018). § 409.175(2)(I), Fla. Stat. (2018).

BB. **“Siblings”** means brothers and sisters of Children within the meaning of section 39.01(80), Florida Statutes (2018).

CC. **“Southern Region”** means Miami-Dade and Monroe Counties.

DD. **“SIPP”** means Statewide Inpatient Psychiatric Programs as defined in Rule 59G-4.120, Fla. Admin. Code (2018) (adopting the Florida Medicaid Statewide Inpatient Psychiatric Program Coverage Policy (Dec. 2015)) and as used in section 409.976, Florida Statutes (2018).

EE. **“STFH”** means Specialized Therapeutic Foster Homes, also referred to as Therapeutic Foster Home, or a residential program in a community-based setting where one or two minors live in a licensed foster home with adults who receive specialized mental health training and support per Rule 65E-10.014(5)(a), Fla. Admin. Code (2018).

FF. **“STGH”** means Specialized Therapeutic Group Homes or a 24 hour residential program licensed under Chapter 65E-9, Fla. Admin. Code (2018), providing community-based mental health services in a home-like setting for up to twelve Children who meet the criteria in section 394.492(5) or (6), Florida Statutes (2018) per Rule 65E-10.014(5)(b), Fla. Admin. Code (2018).

GG. **“Well-Being”** means a Child's emotional, developmental, educational, social, physical and mental health needs per Rule 65C-30.001(124), Fla. Admin. Code (2018).

HH. **“Workgroup”** is described in **Part II.**

## **Part II. Workgroup**

DCF will convene a Services and Placement Continuum Workgroup regarding the Southern Region, inviting representatives from AHCA, the Child Welfare and Behavioral Health Specialty Plan, APD, the CBC and community stakeholders (including, but not limited to, private providers, and Children and parents and advocates for Children and caregivers) to inform the assessment and expansion of Placements, treatment, and Well-Being services for Class Members, and the availability and delivery of necessary, evidence-based, and promising practices and services within the service and Placement array continuum.

## **Part III. Gap Analysis**

After consultation with the Workgroup, DCF will focus on and identify gaps in the continuum of Placements and services available to meet the needs (including mental health needs) of Class Members.



**A. Identification of Gap Analysis Tools.** Within 90 days of entry of the Agreement, and after consultation with the Workgroup, DCF will identify to Class Member Representatives the instrument(s) it will use to conduct a gap analysis to do the following:

1. Determine the Placement needs and related gaps in the continuum of Placements for Class Members;
2. Make specific recommendations to remedy the identified gaps in the continuum of Placements for Class Members;
3. Determine the mental health treatment and mental health service needs and related gaps in the continuum of mental health treatment and service needs for Class Members; and
4. Make specific recommendations to remedy the identified gaps in the continuum of mental health treatment and services for Class Members.

**B. Implementation of Gap Analysis Tools.** Within 180 days of identifying the instrument(s) it will use to conduct the Gap Analysis and in consultation with the Workgroup, DCF will complete implementation of the Gap Analysis.

**C. Gap Analysis Report.** Within 45 days of completing implementation of the Gap Analysis, DCF will deliver to Class Member Representatives and make public a report containing at least these resulting findings and any associated recommendations:

1. The number and array of mental health and behavioral services and treatment necessary to provide required assessments and screens and to meet the assessed behavioral and mental health needs of Class Members in the least restrictive and most family-like setting within their home county, including, but not limited to, the existence of community-based providers of treatment services and the existence of community-based services accessible to Placement caregivers;
2. The number, array and availability to Class Members of service supports that utilize trauma-informed best practices;
3. The number, array and availability to Class Members of behavioral health mobile response interventions;
4. The number and array of family foster homes necessary to meet the assessed needs of Class Members in the least restrictive, most family-like setting available in close proximity to the home of Class Members' parents pursuant to section 39.523(1)(a) and 39.6012(3)(d), Florida Statutes (2018);
5. The number and array of foster family homes necessary to place Class Members and their Siblings together when safe, appropriate, and in their best interests pursuant to section 409.145(1), Florida Statutes (2018);

6. The number and array of STFH necessary to meet the assessed needs of Class Members in the least restrictive, most family-like setting available in close proximity to the home of Class Members' parents pursuant to section 39.523(1)(a) and 39.6012(3)(d), Florida Statutes (2018);

7. The number and array of STGH necessary to meet the assessed needs of Class Members in the least restrictive, most family-like setting available in close proximity to the home of Class Members' parents pursuant to section 39.523(1)(a) and 39.6012(3)(d), Florida Statutes (2018);

8. The number and array of SIPP providers to meet the assessed needs of Class Members in the least restrictive, most family-like setting available in close proximity to the home of Class Members' parents pursuant to section 39.523(1)(a) and 39.6012(3)(d), Florida Statutes (2018);

9. The number and array of Placement services available to licensed foster parents in order to avoid Placement disruption. See Rule 65C-15.021(1)(a), Fla. Admin. Code; and

10. The system for tracking the availability of Placements and matching such Placements with Class Members' assessed needs.

D. **Disclaimer.** The findings or results of the Gap Analysis including the conclusions contained within the Gap Analysis Report cannot be the basis for adding Outcomes or Placement Commitments as defined in **Parts IV** and **V**. The Gap Analysis and its implementation shall not be a precondition for DCF to take steps to achieve or actually to achieve the Outcomes and Placement Commitments.

#### **Part IV. Outcomes**

A. DCF shall substantially comply with the following Outcomes 1, 2, and 3 by no later than December 31, 2021, provided that DCF is entitled to extend the due date of any Outcomes until December 31, 2022, if DCF determines that it is not in substantial compliance by December 31, 2021. DCF is alternatively entitled to accelerate the due date on any of the Outcomes 1, 2 or 3. Unless DCF has achieved substantial compliance and exit through performance validated by the Auditor, DCF shall notify the Auditor by December 31, 2021 of its actual performance on each of the Outcomes not exited.

1. **Outcome 1.** Of all Children entering Out-of-Home Care in a 12-month period, the rate of moves from a Placement Setting shall not exceed 4.12 moves per 1,000 days in care.

2. **Outcome 2:** 90% of cases reviewed of Class Members shall be in a Placement Setting that at the time of the review is stable, incorporated from Item 4 of the CFSR Onsite Review Instrument and Instructions (Jan. 2016), and any changes in the Placement Setting that occurred during the period under review were in the best interests of the Child and consistent with achieving the Child's permanency goal(s).



3. **Outcome 3.** 90% of cases reviewed of Class Members during the period under review shall have their mental and behavioral health needs addressed, calculated utilizing the methodology outlined in the audit process of this Agreement and incorporated from Item 18 of the CFSR Onsite Review Instrument and Instructions (Jan. 2016).

B. **Minimum Duration.** DCF must achieve the Outcomes for a minimum duration. In order for Outcome 1 to be achieved, DCF must (i) initially show the rate of moves from a Placement Setting does not exceed 4.12 moves per 1,000 days in care for one 12-month measurement period and (ii) hold the rate of moves from a Placement Setting at or above 4.12 moves per 1,000 days in care for a second 12-month measurement period, beginning six months after the initial measurement period. In order for Outcomes 2 and/or 3 to be achieved, DCF must (i) initially hit performance at or above 90% for a 12-month measurement period and (ii) hold at or above 90% for a second 12-month measurement period, beginning six months after the initial hit measurement period.

C. **Exit.** Once DCF has substantially complied with Outcome 1, 2 or 3, DCF shall have no more obligations under this Agreement with respect to that Outcome.

#### **Part V: Placement Commitments**

DCF shall substantially comply with the following Placement Commitments 1, 2 and 3 by no later than December 31, 2021, provided that DCF is entitled to an extension of up to six months if DCF determines that it is not in substantial compliance with the Placement Commitment.

A. **Placement Commitment 1.** Defendant will cease placing Class Members in any hotel, motel, Contracted Service Provider, or state agency office in accordance with section 409.175(4)(b), Florida Statutes (2018), unless in extraordinary circumstances necessary to protect the safety and security of the Child as documented in the Child's record and approved by the RMD. In any such extraordinary circumstances, Defendant will provide notice within 24 hours of the Child being placed to the Child's guardian ad litem, attorney, and the dependency court to which the Child's case is assigned. The period of measurement for Placement Commitment 1 shall be January 1, 2021 to December 31, 2021. DCF may, in its sole discretion, accelerate the initial 12-month period of measurement for Placement Commitment 1.

B. **Placement Commitment 2.** Foster homes may not exceed their licensed capacity without a Capacity Waiver being approved by the RMD, in accordance with Rule 65C-13.032, Fla. Admin. Code, for one of the following three reasons: (a) to accommodate Sibling groups; (b) to accommodate a Child or Sibling group who had lived in the home previously; or (c) to accommodate a teen parent to have his or her Child placed in the same home. The CBC shall track the total number of waivers and the number of Children served and living in those homes. The period of measurement for Placement Commitment 2 shall be January 1, 2021 to December 31, 2021. DCF may, in its sole discretion, accelerate the initial 12-month period of measurement for Placement Commitment 2.



C. **Placement Commitment 3.** No Class Members under age six (6) will be placed in a shift care setting without the express written approval of the RMD based on one of the following: (1) to prevent the separation of Siblings per Rule 65C-14.040(6), Fla. Admin. Code, (2) to prevent separation of a parenting young adult and Child, (3) court order, or (4) extraordinary treatment or service needs. The criteria set out above are not satisfied merely by the lack of single family homes available to place Class Member(s). The period of measurement for Placement Commitment 3 shall be January 1, 2021 to December 31, 2021. DCF may, in its sole discretion, accelerate the initial 12-month period of measurement for Placement Commitment 3.

D. **Exit.** DCF will have satisfied a Placement Commitment in this **Part V** when the Auditor validates that DCF has achieved the performance standard for that Placement Commitment. Once the Auditor validates that DCF has substantially complied with any Placement Commitment, DCF shall have no more obligations under this Agreement with respect to that Placement Commitment. If Class Member Representatives provide substantial evidence to the Auditor that a Placement Commitment previously satisfied by DCF is no longer met and is contributing to a failure to meet an Outcome, the Auditor may recommend that DCF reinstate one or more of the Placement Commitments. In the event DCF disagrees, the Parties may invoke the Dispute Resolution procedures in **Part VII** to determine whether such Placement Commitment should be reinstated and for how long.

#### **Part VI. Validation**

A. **Auditor.** The Parties agree that the Auditor will be Kevin M. Ryan or, if he is unable or unwilling to serve, the Parties agree to choose a mutually agreeable alternative Auditor and if they are unable to agree on the Auditor to invoke the Dispute Resolution Procedures in **Part VII**. Neither Party shall have supervisory authority over the Auditor. DCF shall engage the Auditor at DCF expense. DCF will ensure the Auditor has access to the information and data necessary to perform the responsibilities assigned to the Auditor in this Agreement. All confidential information obtained by the Auditor shall be maintained as such by the Auditor consistent with federal and state law, and shall be returned to DCF or destroyed upon exit from this Agreement. For the purposes of satisfying his responsibilities under this Agreement, and only for these purposes, the Auditor may retain child welfare professionals who have participated in the CFSR, subject to the supervision and oversight of the Auditor. As a condition of receiving or reviewing information, the Auditor, and any professionals retained by the Auditor, must sign DCF's Data Sharing Agreement, and use and disclose child welfare and other confidential information only as necessary to accomplish the Auditor's work pursuant to this Agreement and for no other purpose.

B. **Audit Process.** The Audit Process for Outcomes and Placement Commitments is as follows:

1. For **Part IV(A)(1)**, the Auditor shall assess whether the rate of moves from a Placement Setting for all Children entering Out-of-Home Care in Florida in a 12-month period does not exceed 4.12 moves per 1,000 days in care in accordance with 45 C.F.R. Part 1355. The initial period of measurement for Outcome 1 shall be January 1, 2021 to December



31, 2021. Provided that DCF may, in its sole discretion, accelerate the initial period of measurement for Outcome 1. The methodology for validating performance on Outcome 1 shall be as follows: The denominator is: Of Children who enter care in a 12-month period, the total number of days these Children were in care as of the end of the 12-month period. The numerator is: Of Children in the denominator, the total number of moves from a Placement Setting during the 12-month period. Children who are in care for fewer than 8 days during the 12-month period will not be included in the numerator and denominator. Children who enter care at age 18 or older will not be included in the numerator and denominator. A Child's time in care and any moves from a Placement Setting after the Child's eighteenth (18<sup>th</sup>) birthday will not be counted in the numerator and denominator. The Child's initial removal from home and into care will not be counted as a move from a Placement Setting for purposes of the numerator. DCF will produce all data and information to the Auditor necessary to validate DCF's performance, showing each Child in the denominator and the corresponding number of moves from a Placement Setting experienced by that Child during the 12-month period. The Auditor will independently verify the accuracy of the data by comparing the number of moves attributed to Children in the file to the number of moves recorded for Children in a random sample of Children's individual case records. In order for Outcome 1 to be achieved, DCF must (i) initially show the rate of moves from a Placement Setting does not exceed 4.12 moves per 1,000 days in care for one 12-month measurement period and (ii) hold the rate of moves from a Placement Setting at or above 4.12 moves per 1,000 days in care for a second 12-month measurement period, beginning six months after the initial measurement period. Once DCF has achieved this level of performance, subject to the Auditor signing DCF's Data Sharing Agreement, DCF will produce all data and information to the Auditor necessary to validate DCF's performance showing each Child in the denominator and the corresponding number of Placement Setting moves experienced by that Child during the 12-month period. The Auditor will independently verify the accuracy of the data by comparing the number of moves from a Placement Setting attributed to Children in the file to the number of moves from a Placement Setting recorded for Children in a random sample of Children's individual case records. The Auditor will have up to 90 days from receipt of the data to complete this verification.

2. For **Part IV(A)(2)** and **Part IV(A)(3)**, for the purposes of evaluating achievement of Outcomes 2 and 3, the Parties agree to apply the methodology set forth in Item 4 ("Stability of the Foster Care Placement") and Item 18 ("Mental/Behavioral Health of the Child") of the CFSR Onsite Review Instrument and Instructions (Jan. 2016), respectively, to a cohort of Class Members. The initial review shall commence no later than December 31, 2021, using the preceding 12 months as the period under review. Provided that DCF may, in its sole discretion, accelerate the initial review. At the end of the 12-month period under review, DCF shall propose a random sample for the case record review to the Auditor. The sample must be a statistically significant case review sample for Class Members and must be approved by the Auditor with a 90% confidence interval;

a) The initial review shall commence as follows: DCF staff from the Southern Region will review all of the cases within the sample approved by the Auditor using the CFSR processes, instructions and tools in effect at the time of the execution of this Agreement. Following completion of the Southern Region's review, DCF Quality Assessment (QA) staff will review the sample and notify the Auditor when the case review is completed. DCF will submit



the final results and all associated data and information from the case reviews for the period under review to the Auditor. The Auditor will then independently conduct a review of the sample, using cases within the sample selected by the Auditor, on a minimum of 25% of the cases up to a maximum of 50% of the cases. The Auditor shall share his findings with the Parties as to performance by DCF with respect to the Outcome within 90 days from receipt of the sample. The Auditor shall have access to all electronic and paper records in the Child's case file in order to validate performance.

b) In order for Outcomes 2 and/or 3 to be achieved, DCF must initially hit performance at or above 90% for a 12-month measurement period and hold for a second 12-month measurement period, beginning six months after the initial hit measurement period. Once DCF has achieved performance at or above 90% for Outcomes 2 and/or 3 for the first 12-month measurement period, DCF shall propose a new random sample to the Auditor for the subsequent case record review. The sample must be a statistically significant case review sample approved by the Auditor for Class Members with a 90% confidence interval;

3. For **Part V**, the Auditor shall validate performance of the Placement Commitments.

a) For **Part V(A)** Placement Commitment 1, the DCF Southern Region will develop and distribute to pertinent DCF and CBC lead agency staff within 90 days of the Effective Date, a written protocol for reporting/notification of any Children sleeping in offices, hotels or other unlicensed/unapproved Placements in accordance with the terms outlined in the Agreement. All incidents will be tracked on an Excel spreadsheet or other format approved by DCF and the Auditor, and made available to the Auditor upon request. The Auditor shall select and evaluate a random sample of cases from the preceding 12-months involving Class Members for validation purposes. The Auditor will have up to 90 days of receipt of materials from DCF to complete the validation.

b) For **Part V(B)** Placement Commitment 2, the DCF Southern Region will develop and distribute to pertinent DCF and CBC lead agency staff within 90 days of the Effective Date, a written protocol regarding Capacity Waivers in accordance with the terms outlined in the Agreement. All Capacity Waivers will be tracked on an Excel spreadsheet or other format approved by DCF and the Auditor. The signed Capacity Waivers and any underlying documentation will be made available to the Auditor for review upon request for validation purposes. The Auditor shall select and review a random sample of cases involving Class Members from the preceding for validation purposes. The Auditor will have up to 90 days of receipt of materials from DCF to complete the validation.

c) For **Part V(C)** Placement Commitment 3, the DCF Southern Region will track and the Auditor will validate all Class Members under the age of 6 who are placed in a shift care setting in accordance with the terms outlined in the Agreement. Documentation of written approval by the RMD will be made available to the Auditor for the purpose of validation. The Auditor will have up to 90 days from receipt of the documentation to complete the validation.



4. In the event of a dispute regarding whether an Outcome or Placement Commitment was satisfied, DCF shall provide the information and data obtained and used by the Auditor and the Auditor's files regarding the disputed item to the Class Member Representatives if they sign a mutually agreeable Data Sharing Agreement consistent with HIPAA and state confidentiality and privacy law and use and disclose child welfare and other confidential information only as necessary to carry out this Agreement and for no other purpose. In the absence of agreement on a Data Sharing Agreement, the data will not be disclosed to the Class Member Representatives. To the extent that any of the data disclosed pursuant to this Agreement is Protected Health Information, the Parties agree that such disclosure is required by law, and that neither Auditor nor any Plaintiff or Class Member Representative is a Business Associate of DCF or Defendant.

### **Part VII. Dispute Resolution**

The Parties have agreed that they should try to resolve their differences over implementation of this Agreement before returning to Court. Toward this end they have structured the following dispute resolutions process so as to make returning to Court uncommon and the last resort. The escalation steps in that process are:

A. **Petition the RMD.** In the event of any disagreement regarding any aspect of the implementation of this Agreement, the Class Member Representatives will provide written notice to the RMD, fully describing the issue presented and explaining why any performance, decision, action or failure to act is inconsistent with this Agreement and which part(s) of it. Prior to responding to the petition, the RMD will consult with the Secretary, or the Secretary's designee, to ensure that any response reflects the policy of the Secretary. The RMD will respond within 20 days of the receipt of the request.

B. **Notice, Mediation, and Litigation.** In the event the Parties are unable to agree to a resolution under **Part VII(A)**, the Parties agree to engage in additional dispute resolution to include the following:

1. **Notice.** Prior to seeking judicial remedies for non-compliance, including, but not limited to, the failure of DCF to meet any Placement Commitment or Outcome, Class Member Representatives shall notify the RMD in writing if they believe DCF is out of compliance with any provisions of this Agreement.

2. **Cure Period.** After such notice, the Parties shall engage in a 60-day period of mediation and good faith negotiations which, at the option of either Party, may be facilitated by Dominic Caparellò, Esq. or, if he is unable or unwilling to serve, the Parties agree to choose a mutually agreeable alternative Mediator and if they are unable to agree on the Mediator to ask the National Academy of Distinguished Neutrals to identify one. In the event the parties cannot agree to an alternative mediator, either party may seek the assistance of the Court in selecting or appointing an alternative mediator. Once an alternative mediator is either agreed upon by the Parties or selected by the Court, the Mediator will mediate between the Parties to reach a mutually agreeable resolution binding on both Parties.



3. **Bypass.** Class Member Representatives may bypass Part VII(B)1 and 2 and seek immediate relief in Court if the Class Member Representatives clearly demonstrate that DCF action or inaction in material contravention of this Agreement caused or is likely to cause an immediate and substantial risk of serious harm to Class Members and there is no time for negotiations.

C. **Court.** In the event the Parties are unable to reach agreement under Part VII(A) or (B), the Parties may invoke the final stage of dispute resolution by filing a motion with the Court. The Class Member Representatives may seek relief from the Court if Class Member Representatives certify that DCF is not in substantial compliance with the terms of the Agreement. The Class Member Representatives agree not to seek judicial relief for isolated, technical, or de minimis violations of this Agreement, or for violations relating solely to an individual Child, and nothing in this Agreement is intended to prevent any state court with jurisdiction over an individual Class Member's case from issuing specific rulings in such individual case.

#### **Part VIII. Termination of Litigation**

The Court shall issue an Order dismissing this Lawsuit with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2), after compliance with Federal Rule of Civil Procedure 23(e). Such Order shall become effective upon payment of the fee award described in Part X of this Agreement. Such order of dismissal will also comply with the requirements for the entry of injunctions under Federal Rule of Civil Procedure 65(d)(1), and the Court will expressly incorporate the actual terms of this Agreement and make the Parties' compliance with the terms of this Agreement part of that dismissal order.

#### **Part IX. Class Certification**

Pursuant to the terms of this Agreement, this case shall be certified as a class action and the Class Members shall constitute the class certified. Upon execution of this Agreement, the Parties will use their best efforts to obtain Court approval of this Agreement including, without limitation, by filing a joint motion requesting that the Court approve a Notice of Settlement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. The Parties shall comply with all applicable aspects of Rule 23(e), including obtaining an order of preliminary approval from the Court including the form and publication of notice to Class Members and the conducting of a fairness hearing by the Court prior to final approval. Defendant shall bear all costs of notice prescribed by the Court pursuant to Federal Rule of Civil Procedure 23 in connection with the process for final Court approval of this Agreement.

#### **Part X. Miscellaneous**

A. **Enforceability.** All of the provisions in this Agreement are separately and independently enforceable, as set forth in this Agreement. Unless otherwise specifically stated in a provision of this Agreement, all provisions of this Agreement shall apply to all Class Members.

B. **Attorney's Fees and Costs.** The parties agree on binding arbitration to determine an award of attorney's fees and costs. The Arbitrator shall be Michael Coppins. The obligation to pay Mr. Coppins's fees shall be shared equally among the parties. The award will be governed by federal law. The parties shall each bear their own fees and expenses incurred in the arbitration. The parties agree to support the fee award as reasonable and appropriate in proceedings to obtain court approval of the settlement.

C. **Entire Agreement.** This Agreement contains the entire agreement of the Parties relating to the subject matter hereof.

D. **No Admission of Liability.** Neither the Agreement, the Court Order nor any of its language, or an award of attorneys' fees and costs to the Plaintiffs may be interpreted as an admission of fact or of legal liability or as evidence of any other liability, wrongdoing or unlawful conduct. The Parties acknowledge that this Agreement has been entered into solely to settle disputed claims.

E. **No Mandated Appropriations.** The Parties recognize that nothing in this Agreement obligates the Legislature to appropriate funds in connection with the implementation of this Agreement or to establish any new programs. Defendant's failure to provide or Defendant's efforts to provide adequate funding and resources shall not excuse noncompliance and shall not limit remedies to address noncompliance with this Agreement.

F. **Amendment.** The Parties may, by joint written agreement, amend and alter any time limits described in the Agreement, provided that concurrence of the Court will also be necessary.

G. **Court Approval Required.** This Agreement will become effective only if it is approved by the Court consistent with its terms. If the Court does not approve this Agreement, then it will be null and void, and all Parties will be placed in the same position as if this Agreement were never proposed or agreed to by the Parties. No language in this Agreement may be used in litigation if this Agreement is voided.

H. **Interpretation.** All Parties to this Agreement have participated in its drafting and, consequently any ambiguity shall not be construed either for or against any Party.

I. **Modification.** This Agreement may be modified upon the consent of the Parties and approval of and entry of an order by the Court.

J. **Continuation.** For so long as this Agreement remains in effect, all provisions referring to Defendant or DCF shall apply with full force and effect to the State of Florida and to any subsequent agency or agencies with any of the responsibilities that apply to the current DCF as of the Effective Date regardless of any subsequent changes to the governing organizational structure of DCF. This Agreement shall be binding on all successors, assignees, employees, agents and all those working for or on behalf of DCF.

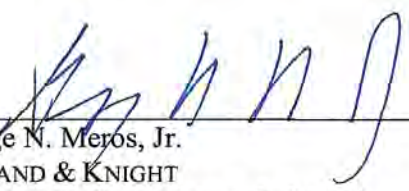



K. **Qualified Protective Order.** The Parties agree and stipulate that they are prohibited from using or disclosing any Protected Health Information disclosed by or on behalf of DCF or Defendant for any purpose other than this litigation, and that they must return to DCF the Protected Health Information (including all copies made) at the end of the litigation or proceeding.

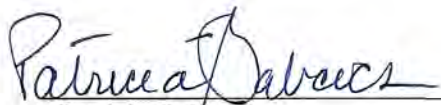
IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of this 11<sup>th</sup> day of March, 2019 set forth below.

For the Defendant:

For the Plaintiffs:

  
George N. Meros, Jr.  
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